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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PATTONIUM, INC.

07 CIV 6204 (PKC)

Plaintiff,
-against-

SECOND
AMENDED
COMPLAINT

J & D ASSOCIATES, LLC,
NORTH AMERICAN CONCERTS, CORP.,
EDWARD MORELLI,
NORTH AMERICAN CONCERTS, INC.

Defendants.
-----X

Plaintiff, Pattonium, Inc., by its attorneys, Shukat Arrow Hafer Weber & Herbsman, LLP, alleges for its complaint, upon knowledge and belief as to its own acts and upon information and belief as to the acts of all others, as follows:

THE PARTIES, JURISDICTION AND VENUE

1. Plaintiff Pattonium, Inc. (hereinafter, "Pattonium") is a corporation incorporated under the laws of the State of Pennsylvania with its principal place of business at 1212 Grenox Road, Wynnwood, Pennsylvania 19096. Plaintiff furnishes the musical performing services of the soul and R&B singer, Patricia Edwards, professionally known as Patti LaBelle (hereinafter, "LaBelle").

2. Defendant J & D Associates, LLC ("J&D") is a limited liability company organized and existing under the laws of the State of Michigan with its principal place of business at 34561 Fontana Drive, Sterling Heights, Michigan 48312. The sole members of J&D are David Underwood, who is a citizen of the State of Michigan and resides at 34561 Fontana Drive, Sterling Heights, Michigan 48312, and Johnnie Washington, who is a citizen of the State of Michigan and resides at 18970 El Dorado Place, Lathrup Village, Michigan 48076.

3. On information and belief, North American Concerts, Corp. is a corporation incorporated under the laws of the State of Florida with its principal place of business at 10816 Belmont Drive, New Port Richey, Florida 34654.

4. On information and belief, North American Concerts, Inc. is a corporation incorporated under the laws of the State of Florida with its principal address at 7212 U.S. Highway 19, Suite #3, New Port Richey, Florida 34652. Subsequent to entering into the joint venture with J&D and being a signatory to the Venue Agreement more fully described in paragraph "10" hereinbelow, this entity has been marked inactive by the Florida Secretary of State.

5. On information and belief, Edward Morelli (hereinafter, "Morelli") is an individual who maintains a residence in the State of Florida. On information and belief, Morelli the dominant force behind the acts of North American Concerts, Corp. and/or North American Concerts, Inc. complained of herein; he owns and controls the activities of North American Concerts, Corp., profits from its

operations, and entered into the agreements at issue as “North American Concerts” with no corporate designation.

6. J&D, North American Concerts, Corp., Morelli and North American Concerts, Inc. are hereinafter collectively referred to as the “Defendants”.

7. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(a).

8. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(a).

BACKGROUND FACTS

9. Pursuant to an agreement (hereinafter, the “Joint Venture Agreement”) dated June 25, 2005 between “Johnnie Washington and David Underwood known as (J&D Associates, LLC) and Edward Morelli known as (North American Concerts)”, the Defendants entered into a joint venture to, *inter alia*, produce a concert featuring the live performance of LaBelle on August 13, 2005 at Chene Park Outdoor Theater in Detroit, Michigan (the “Concert”). The Joint Venture Agreement was executed by Edward Morelli individually. A copy of the Joint Venture Agreement is annexed hereto as Exhibit A.

10. Pursuant to an agreement (hereinafter, the “Venue Agreement”) dated July 8, 2005 between The Right Productions, Inc., on the one hand, and North American Concerts, Inc. and J&D Associates, on the other hand, the Defendants acquired the right to use the Chene Park Amphitheater to present the Concert. The

Venue Agreement was executed by David Underwood on behalf of the Defendants. A copy of the Venue Agreement is annexed hereto as Exhibit B.

11. Pursuant to an agreement (hereinafter, the "Concert Agreement") between Pattonium and Morelli trading as a business entity named North American Concerts, the Defendants engaged Pattonium to furnish the performing services of LaBelle for the Concert. A copy of the Concert Agreement is annexed hereto as Exhibit C.

12. Paragraph 15(A) of the Concert Agreement states as follows:

This agreement has been entered into in the State of New York, and the validity, interpretation and legal effect of this agreement shall be governed by the laws of the State of New York applicable to contracts entered into therein. The New York courts (State and Federal) will have jurisdiction of any controversies regarding this agreement; any action or other proceeding which involves such a controversy will be brought in those courts in New York County and not elsewhere.

13. As consideration for the performance of LaBelle, the Defendants were obligated to pay Pattonium the sum of One Hundred Thousand (\$100,000.00) United States Dollars (the "Fee"), plus roundtrip air transportation, ground transportation, hotel rooms and meals for seventeen (17) individuals.

14. Pursuant to paragraph 4(B) of the Concert Agreement, a deposit in the amount of Fifty Thousand (\$50,000.00) United States Dollars (the "Deposit") was due by wire transfer to Pattonium's account at JP Morgan Chase Bank, New York, New York, upon the execution of the Concert Agreement. Pursuant to paragraph 4(C) of the Concert Agreement, the balance of the Fee was due to Pattonium immediately prior to LaBelle's performance, in cash or by certified check.

15. Paragraph 4(D) of the Concert Agreement states as follows:

In the event that PURCHASER refuses or neglects to make the aforementioned payments, PRODUCER has the right to cause Artist not to perform in accordance with paragraph 2 without waiving any of PRODUCER'S rights herein.

16. On or about June 24, 2005, Morelli requested that Pattonium agree to the payment of the Deposit in two installments: \$25,000 by June 28, 2005, and \$25,000 by July 13, 2005. On or about June 28, 2005, Pattonium agreed to Morelli's request.

17. On or about July 6, 2005, the first installment of the Deposit was sent by wire transfer to Pattonium's account from "J & D Associates LLC, In care of North American Concerts".

18. On or about July 27, 2005, Morelli sent an email to Pattonium's attorney, Jonas Herbsman of Shukat Arrow Hafer Weber & Herbsman, LLP, to advise that the Concert was cancelled due to problems with the venue.

19. Following Morelli's email, Mr. Herbsman was contacted by Mr. Johnnie Washington of J&D, who advised that J&D was North American Concerts' partner with respect to the Concert. A copy of the Joint Venture Agreement was furnished to Mr. Herbsman as evidence of the Defendants' partnership.

20. Mr. Washington requested the opportunity to reschedule the Concert for an alternate date at the Fox Theater in Detroit, Michigan, with the first installment of the Deposit to be applied to the new date. Despite having no obligation to do so, Pattonium agreed to Mr. Washington's request, upon the

condition that J&D enter into a new agreement with Pattonium for the Fox Theater date.

21. On or about August 15, 2005, Pattonium provided J&D with an agreement (hereinafter, the "Fox Theater Agreement") for the new date, which was required to be executed and returned to Pattonium by August 25, 2005. Under the Fox Theater Agreement, J&D was required to pay the \$25,000 balance of the Deposit to Pattonium on or before August 19, 2005.

22. J&D failed to both pay the balance of the Deposit and return an executed copy of the Fox Theater Agreement by August 25, 2005, and has failed to pay any additional amounts to Pattonium since that date. As a result, Pattonium withdrew its offer to reschedule the Concert on an alternate date.

23. As a result of the Defendants' failure to pay the full amount of the Deposit, and in accordance with the terms of the Concert Agreement, Pattonium was damaged in the amount of One Hundred Thousand (\$100,000.00) United States Dollars, of which Twenty Five Thousand (\$25,000.00) United States Dollars has previously been received from Defendants, pursuant to the Concert Agreement.

**AS AND FOR A
FIRST CAUSE OF ACTION
(Breach of Contract)**

24. The Plaintiff repeats and realleges each and every allegation of paragraphs "1" through "23" as if fully set forth herein.

25. The Defendants' failure to pay the full amount of the Deposit constitutes a material breach of the Agreement.

26. As a result of the foregoing, Pattonium has been damaged in the amount of One Hundred Thousand (\$100,000.00) United States Dollars, of which Twenty Five Thousand (\$25,000.00) United States Dollars has previously been received from Defendants, plus interest, costs and attorneys' fees.

WHEREFORE, Plaintiff prays for relief as follows:

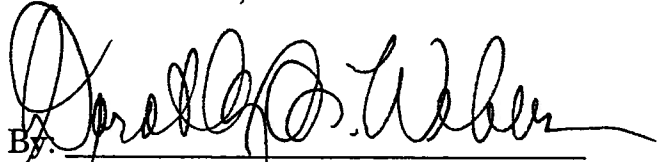
- (a) That Plaintiff be granted judgment against the Defendants on the First Cause of Action in the amount of One Hundred Thousand (\$100,000.00) United States Dollars, of which Twenty Five Thousand (\$25,000.00) United States Dollars has previously been received from Defendants;
- (b) for all costs, expenses and attorneys fees incurred herein; and
- (c) for all such other relief that the Court deems just and proper.

JURY DEMAND

Plaintiff demands a jury trial.

Dated: New York, New York
August 30, 2007

**SHUKAT ARROW HAFFER WEBER
& HERBSMAN, LLP**



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